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the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to the Board, it will terminate the corporate existence of the dissolved mutual holding company and the mutual holding company's charter shall thereby be canceled.

### Subpart C—Subsidiary Holding Companies

#### § 239.20 Scope.

This subpart applies only to a subsidiary holding company of a mutual holding company.

#### § 239.21 Charters.

(a) *Charters.* The charter of a subsidiary holding company of a mutual holding company shall be in the form set forth in appendix B of this part and may be amended pursuant to § 239.22. The Board may amend the form of charter provided in appendix B.

(b) *Optional charter provision limiting minority stock ownership.* (1) A subsidiary holding company that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time it conducts its initial minority stock issuance, or, subject to the condition below, at any time during the five years following a minority stock issuance that such subsidiary holding company conducts in accordance with the purchase priorities set forth in subpart E of this part, include in its charter the provision set forth in paragraph (b)(2) of this section. For purposes of the charter provision set forth in paragraph (b)(2), the definitions set forth at § 239.22(b)(8) apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The subsidiary holding company may adopt the charter provision set forth in paragraph (b)(2) of this section after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the subsidiary holding company might adopt such a charter provision.

(2) *Beneficial ownership limitation.* No person may directly or indirectly offer

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to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the subsidiary holding company held by persons other than the subsidiary holding company's mutual holding company parent. This limitation expires on [insert date within five years of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 238.12(a)(7) of this chapter.

(c) In the event a person acquires stock in violation of this section, all stock beneficially owned in excess of 10 percent shall be considered "excess stock" and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

#### § 239.22 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a subsidiary holding company must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the subsidiary holding company must adopt a resolution proposing the charter amendment that states the text of such amendment.

(2) *Form of filing—*(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the subsidiary holding company's stock, the removal of incumbent management, or involve a significant issue of law or policy, the subsidiary holding company shall file the proposed amendment with and shall obtain the prior approval of the Board pursuant to § 238.14 of this chapter; and

(ii) *Notice requirement.* If the proposed charter amendment does not implicate paragraph (a)(2)(i) of this section and such amendment is permissible under

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all applicable laws, rules or regulations, the subsidiary holding company shall submit the proposed amendments to the appropriate Reserve Bank, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the subsidiary holding company's shareholders.

(b) *Approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter in adopting such amendment, unless the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the charter as set forth in appendix B of this part, shall be approved at the time of adoption, if adopted without change and filed with the Board within 30 days after adoption, provided the subsidiary holding company follows the requirements of its charter in adopting such amendments.

(1) *Title change.* Prior to changing its corporate title, a subsidiary holding company must file with the appropriate Reserve Bank a written notice indicating the intended change. The Reserve Bank shall provide to the subsidiary holding company a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Reserve Bank or the Board does not notify the subsidiary holding company of its objection on the grounds that the title misrepresents the nature of the institution or the services it offers, the subsidiary holding company may change its title by amending section 1 of its charter in accordance with this section and the amendment provisions of its charter.

(2) *Home office.* A subsidiary holding company may amend its charter by substituting a new domicile in section 2 of its charter.

(3) *Number of shares of stock and par value.* A subsidiary holding company may amend Section 5 of its charter to

change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A subsidiary holding company may amend its charter by revising Section 5 to read as follows:

*Section 5. Capital stock.* The total number of shares of all classes of capital stock that the subsidiary holding company has the authority to issue is \_\_\_\_\_, of which \_\_\_\_\_ shall be common stock of par [or if no par value is specified the stated] value of \_\_\_\_\_ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association or subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or

series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided*, That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the subsidiary holding company with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the subsidiary holding company if the preferred stock is exchanged for securities of such other corporation: *Provided*, That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Board or the Federal Deposit Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving subsidiary holding company in a merger or consolidation for the subsidiary holding company, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the subsidiary holding company's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock*. Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other re-

tirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the subsidiary holding company, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the subsidiary holding company available for distribution remaining after: (i) Payment or provision for payment of the subsidiary holding company's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the subsidiary holding company. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock*. The subsidiary holding company may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the subsidiary holding company;

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(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the subsidiary holding company and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the subsidiary holding company shall file with the appropriate Reserve Bank a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(5) *Limitations on subsequent issuances.* A subsidiary holding company may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchange.

(6) *Cumulative voting.* A subsidiary holding company may amend its charter by substituting the following sentence for the second sentence in the

third paragraph of Section 5: “Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors.”

(7) [Reserved]

(8) *Anti-takeover provisions following mutual to stock conversion.* Notwithstanding the law of the state in which the subsidiary holding company is located, a subsidiary holding company may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

*Section 8. Certain Provisions Applicable for Five Years.* Notwithstanding anything contained in the subsidiary holding company’s charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the subsidiary holding company from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the subsidiary holding company. This limitation shall not apply to a transaction in which the subsidiary holding company forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under §238.12(a) of this chapter.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10 percent shall be considered “excess shares” and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

(1) The term “person” includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the subsidiary holding company.

(2) The term “offer” includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or

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invitation for tenders of, a security or interest in a security for value.

(3) The term “acquire” includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term “acting in concert” means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the subsidiary holding company or amendments to its charter shall be called only upon direction of the board of directors.

(c) *Anti-takeover provisions.* The Board may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the subsidiary holding company shall file as part of its application for approval an opinion, acceptable to the Board, of counsel independent from the subsidiary holding company that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the subsidiary holding company is located. Any such provision must be consistent with applicable statutes, regulations, and Board policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the subsidiary holding company and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(d) *Reissuance of charter.* A subsidiary holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such requests for reissuance should be filed with the appropriate

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Reserve Bank, and contain signatures required by the charter in appendix B to this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

### § 239.23 Bylaws.

(a) *General.* At its first organizational meeting, the board of directors of a subsidiary holding company shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the subsidiary holding company in accordance with the requirements of §§ 239.26, 239.27, 239.28, and 239.29 and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the subsidiary holding company’s charter, except that a bylaw provision inconsistent with §§ 239.26, 239.27, 239.28, and 239.29 may be adopted with the approval of the Board.

(b) *Form of filing—(1) Application requirement.* (i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

(A) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the subsidiary holding company’s stock, or the removal of incumbent management; or

(B) Be inconsistent with §§ 239.26, 239.27, 239.28, and 239.29, with applicable laws, rules, regulations or the subsidiary holding company’s charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(ii) Applications submitted under paragraph (b)(1)(i) of this section are subject to the processing procedures under § 238.14 of this chapter;

(iii) For purposes of this paragraph (b), bylaw provisions that adopt the language of the model bylaws contained in appendix D to this part, if adopted without change and filed with Board within 30 days after adoption, are effective upon adoption. The Board